

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
October 11, 2006 Session

DONALD D. JOHNSON v. SMITH COUNTY, TENNESSEE, ET AL.

**Appeal from the Circuit Court for Smith County
No. 5925W John D. Wootten, Jr., Judge**

No. M2005-02738-COA-R3-CV - Filed on October 26, 2006

In this case involving allegations of negligent investigation by the Sheriff, plaintiff appeals the summary judgment dismissing the county on the grounds that there remained issues of material fact about the Sheriff's intent and credibility. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court
Affirmed**

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and FRANK G. CLEMENT, JR., J., joined.

James L. Harris, Nashville, Tennessee, for the appellant, Donald D. Johnson.

John D. Kitch, Nashville, Tennessee, for the appellee, Smith County, Tennessee.

MEMORANDUM OPINION¹

Based upon the Plaintiff's Responses to Defendant's Concise Statement of Facts, the following facts are not disputed. In April of 2005, the Smith County Sheriff's Office received a 9-1-1 call about domestic violence involving a gun and possible gunfire. Deputy sheriffs responded to the call at a location later determined to be the plaintiff's home. Upon arriving at the scene, the deputies reported that a man with a "long gun" was at the scene. When the deputies asked the man to drop the gun, he turned and fired upon the deputies. The deputies did not return the fire. The man who fired upon the deputies then disappeared into the woods behind the house.

¹Tenn. R. Ct. App. 10 states:

This Court, with the concurrence of all judges participating in the case, may affirm, reverse or modify the actions of the trial court by memorandum opinion when a formal opinion would have no precedential value. When a case is decided by memorandum opinion it shall be designated "MEMORANDUM OPINION," shall not be published, and shall not be cited or relied on for any reason in any unrelated case.

When Sheriff Bane arrived on the scene he questioned the deputies, spoke to others present, and viewed the scene. He was notified that the shooter was the son of the plaintiff, Mr. Johnson. Sheriff Bane and the deputies were told that the plaintiff was in the house and that several other weapons were in the house. Once the officers received permission from an unidentified resident of the house, it was searched, and several guns were found and seized. The plaintiff was detained and taken before a judicial commissioner who committed the plaintiff to be held pending a full investigation of the incident. The plaintiff was released from custody the next morning.

The plaintiff's son was charged with three (3) counts of attempted murder, two (2) counts of reckless endangerment, one count of felony evading arrest, and one count of aggravated domestic assault.

The plaintiff sued Smith County and Sheriff Bane, officially and in his individual capacity, alleging that the Sheriff negligently failed to adequately investigate the complaint of domestic abuse. According to the plaintiff's complaint, if the Sheriff had adequately investigated the incident then the plaintiff would not have been detained. The trial court granted Sheriff Bane summary judgment which judgment is not on appeal.

Although the complaint does not explicitly state that it is based on the Tennessee Governmental Tort Liability Act ("GTLA"), that clearly is the case. Under the relevant provision of the GTLA, Tenn. Code Ann. § 29-20-205, the county's immunity from liability is removed "for injury proximately caused by a negligent act or omission of any employee within the scope of his employment."

The trial court later granted Smith County summary judgment based upon the county's Concise Statement of Undisputed Facts and the plaintiff's responses thereto.² First, the trial court found that to the extent the plaintiff's complaint alleged false arrest, false imprisonment, infliction of mental anguish, or infringement of civil rights, these claims were barred by the GTLA, Tenn. Code Ann. § 29-20-205(2).³ Second, as to negligence, the trial court found as follows:

As to the negligent conduct alleged in this case, the facts and inferences to be drawn from the facts regarding Sheriff Bane's conduct are such that a reasonable person could only reach one conclusion, that the acts were reasonable under the circumstances of this case and therefore were not negligent.

The plaintiff appeals the dismissal of the negligence claim against Smith County.

²The facts in the Statement are a reiteration of Sheriff Bane's affidavit. The plaintiff's only denials pertain to the materiality of the Sheriff's mental state *i.e.* what he "determined" or "considered necessary" or thought.

³On appeal, the plaintiff argues that immunity under the GTLA, Tenn. Code Ann. § 29-20-205(2), is not relevant since he did not allege the defendants committed intentional torts. The trial court was attempting to give the plaintiff the benefit of any possible interpretation of the complaint. Since the plaintiff concedes the complaint alleges negligence alone, we will address solely that allegation.

I. ANALYSIS

The plaintiff argues that the trial court erred in granting the county summary judgment in this GTLA negligence action because the outcome hinges on the Sheriff's state of mind, intent, or credibility. Essentially, he argues that because the Sheriff's affidavit refers at times to the Sheriff's beliefs or conclusions in explaining the actions he took, summary judgment was not appropriate.

A defendant's state of mind or intent is not relevant in a negligence action. To establish a cause of action for negligence, a plaintiff must prove the following elements: duty of care owed by the defendant to plaintiff, a breach of that duty, an injury, and causation both legally and factually. *Biscan v. Brown*, 160 S.W.3d 462, 478 (Tenn. 2004). Whether or not a duty exists is determined by an objective standard and is not based upon a defendant's subjective state of mind. The duty of care "[p]roperly defined, . . . is the legal obligation . . . to conform to a reasonable person standard of care for the protection against unreasonable risks of harm." *McCall v. Wilder*, 913 S.W.2d 150, 153 (Tenn. 1995).

In a negligence action, the standard of conduct is always the same. It is a standard of reasonable care in light of the apparent risk.

Id. Therefore, Sheriff Bane's intent or state of mind is neither at issue nor relevant.

Similarly, we find the plaintiff's references to credibility inapplicable and unpersuasive. None of the material facts are disputed; consequently, credibility issues are not raised. On summary judgment, if the parties agree to a set of facts and those facts lead to the conclusion that a party is entitled to a judgment, summary judgment is appropriate. The court is never called upon to decide credibility, which is not appropriate on summary judgment.

As to the elements of a negligence claim, the plaintiff has not even alleged how the Sheriff breached any duty. In fact, the plaintiff concedes that the Sheriff questioned his deputies, spoke with other witnesses, searched the house with consent, found additional weapons and after taking plaintiff in custody brought him before a judicial officer. Based upon the undisputed facts before us, we fail to see how a reasonable juror could find that Sheriff Bane was negligent in his investigation.

The judgment of the trial court is affirmed. Costs are taxed against the appellant, Donald D. Johnson, for which execution may issue if necessary.

PATRICIA J. COTTRELL, JUDGE